93-456

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1993

JAMES GUARDINO,

Petitioner,

vs.

THE STATE OF CALIFORNIA,

Respondent.

On Petition For Writ Of Certiorari To The California Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the forced administration of anti-psychotic drugs during pretrial proceedings and trial violated Petitioner's rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

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No. _____

In The

Supreme Court of the United States

October Term, 1993

JAMES GUARDINO,

Petitioner,

vs.

THE STATE OF CALIFORNIA,

Respondent.

On Petition For Writ Of Certiorari To The California Supreme Court

PETITION FOR WRIT OF CERTIORARI

Petitioner, JAMES GUARDINO, respectfully prays that a writ of certiorari issue to review the decision of the California Supreme Court which denied hearing and thus affirmed the Superior Court's holding that denied Defendant's claim that he was forcibly administered anti-psychotic drugs during pretrial proceedings and trial which violated his rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

OPINIONS BELOW

There is no official citation of opinion which review is sought in this court jurisdiction. Exact copies of the

order of the Superior Court of California dated April 9, 1993 denying the Writ of Habeas Corpus, the order of the Court of Appeal of California dated April 28, 1993 and the order of the California Supreme Court dated June 23, 1993 are attached in the Appendix.

JURISDICTION

Petitioner invokes the jurisdiction of this court under 28 U.S. Code § 1257(3) on the ground that his rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution were violated.

The Superior Court of the State of California entered its order rejecting Petitioner's Sixth and Fourteenth Amendment claims on April 9, 1993. The Court of Appeal entered its order denying hearing on the petition for writ of habeas corpus on April 28, 1993.

The California Supreme Court denied petition for review on June 23, 1993. The instant petition for writ of certiorari is filed within ninety (90) days of that order.

CONSTITUTIONAL PROVISIONS, TREATIES AND STATUTES

The Sixth Amendment to the United States Constitution:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed,

> which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Eighth Amendment to the United States Constitution:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the United States Constitution:

> **Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> **Section 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male

inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATEMENT OF THE CASE

Petitioner was charged in an Information filed March 26, 1984 in the Superior Court, County of Santa Clara, with two counts of robbery (a violation of Penal Code § 211-213.5), a count of false imprisonment (a violation of Penal Code § 236-237), two counts of rape (a violation of Penal Code § 261(2)), one count of burglary (a violation of Penal Code § 459), two counts of oral copulation (a violation of Penal Code § 288(c)) and two counts of injury to a telephone line (a violation of Penal Code § 591).

On May 24, 1984 the People moved to dismiss the burglary count (a violation of Penal Code § 459) of the Information. That same day, Petitioner was found guilty by a jury of each of the remaining counts in the Information. On July 11, 1984 Petitioner was sentenced to state prison for a term of twenty-seven (27) years.

The judgment was appealed to the Court of Appeal, First Appellate District, Division 4, case number A028167. Thereafter, a writ of habeas corpus was filed, case number A030578, and consolidated with the appeal. On June 6, 1986, the Court of Appeal filed its decision affirming the conviction and denying the writ of habeas corpus.

A timely Petition for review was filed on or about July 7, 1986 in the California Supreme Court. The Petition was denied by the Supreme Court in September 1986 without prejudice to the filing of an original Petition for Writ of Habeas Corpus.

On September 22, 1986, the original Petition for Writ of Habeas Corpus was filed in the Supreme Court case number 25782.

On October 25, 1986, the Supreme Court issued a Writ of Habeas Corpus, returnable before the Superior Court of the County of Santa Clara.

On March 27 and April 1, 1987, an evidentiary hearing was held before the Honorable Thomas C. Hastings. At the conclusion of the hearing, the writ was denied.

On September 10, 1987, Petitioner filed a Petition for Writ of Habeas Corpus in the Court of Appeal, Sixth Appellate District Case Number H003533. On November 18, 1987, the Petition was denied.

Petitioner filed a Petition for Review in the California Supreme Court on or about November 23, 1987 and that Petition was thereafter denied.

Petitioner raised the following issues in his initial Writ of Habeas Corpus:

"(a) Even though trial counsel knew petitioner was under the care of a psychiatrist for a manic-depressive mental disorder, and even though he contacted petitioner's psychiatrist, he at no time advised the psychiatrist of the legal definition of insanity nor asked his opinion as to whether petitioner came within that definition.

"(b) Trial counsel at no time had petitioner examined by a psychiatrist or psychologist specializing in criminal forensic matters for the purpose of determining whether an insanity or diminished responsibility defense should be put forth.

"Trial counsel failed to do this because he considered himself qualified to determine that his client, though

under active psychiatric care, did not suffer from a mental disorder which might provide the grounds for a defense to the charges he faced.

"(c) Trial counsel at no time consulted with petitioner or exercised informed professional judgment concerning the advisability of presenting a defense of insanity or diminished responsibility."

On March 9, 1993 Petitioner filed a Petition for Writ of Habeas Corpus in the Superior Court of the State of California, County of Santa Clara.

In the Petition it was alleged that Petitioner was involuntarily administered an anti-psychotic medication *throughout* all proceedings in the Municipal Court, pretrial, trial and sentencing in the Superior Court and he was denied his constitutional right to effective assistance of counsel because his trial counsel did not bring to the trial court's attention Petitioner was being involuntarily administered anti-psychotic medication.

An exact copy of the reporter's transcript of the trial was filed in the Court of Appeal contemporaneously with the filing of the Petition.

As described *supra*, Petitioner's initial Petition for Writ of Habeas Corpus raised issues related to the competency of his trial counsel but did not address issues related to his Sixth, Eighth and Fourteenth Amendment rights which were violated due to the involuntary administration of anti-psychotic drugs throughout proceedings in the Municipal Court and pretrial, trial and sentencing proceedings in the Superior Court.

The Petition for Writ of Habeas Corpus in the Superior Court was not acted upon by the Superior Court until April 9, 1993 when the writ was denied without hearing. An exact copy of the order denying the writ was filed in the Court of Appeal contemporaneously with the filing of the Petition.

The Superior Court erred in denying the writ and failing to comply with Rule 260 of the California Rules of Court by not ruling on the writ within thirty days of its filing.

Petitioner suffers from an illegal restraint because: (1) he was deprived of his constitutional right to a jury trial provided by the Sixth, Eighth and Fourteenth Amendments to the United States Constitution in that he was involuntarily administered anti-psychotic medication throughout proceedings in the Municipal Court, pretrial, trial, and sentencing proceedings in the Superior Court; and (2) he was deprived of his constitutional right to the effective assistance of counsel provided by the Sixth and Fourteenth Amendments to the United States Constitution in that his trial counsel, although he knew Petitioner had been involuntarily administered anti-psychotic medication throughout the proceeding, failed to bring those facts to the court's attention.

Petitioner had no other plain, speedy, or adequate remedy at law other than by a Writ of Habeas Corpus.

On April 21, 1993 Petitioner filed a Writ of Habeas Corpus in the Court of Appeal of the State of California, Sixth Appellate District, Case Number H011124. On April 28, 1993 the Court of Appeal denied the Writ of Habeas

Corpus without a hearing. The Court of Appeal erred in denying the Writ of Habeas Corpus.

A Petition for Review was filed in the California Supreme Court, Case Number 5032719 on May 7, 1993 and the Petition for Review was denied without hearing on June 23, 1993. The California Supreme Court erred in denying the Petition for Review.

REASON FOR GRANTING THE WRIT OF CERTIORARI

Petitioner's Writ of Habeas Corpus filed in the Superior Court of the State of California raised federal questions relating to the denial of his Sixth, Eighth and Fourteenth Amendment rights.

The Superior Court in its order filed April 9, 1993 concluded that:

> Under the decisions in *Riggins* [*Riggins v. Nevada* 504 U.S. ___ 118 L.Ed.2d 479 (1992)] and *Harper* [*Washington v. Harper* 494 U.S. 210 (1990)], it is clear that a pretrial detainee's due process rights are violated where he is *involuntarily* injected with antipsychotic medicine in order to control the defendant during the course of the criminal proceedings against him unless the defendant is first accorded a hearing in which it is determined that (1) the medication was medically appropriate, taking into consideration less intrusive, alternative means, and necessary to ensure the safety of the defendant or others; or (2) the medication is necessary to ensure the adjudication of the defendant and there are no less intrusive means of carrying this goal out.

Notwithstanding the above, it appears that in the absence of a timely objection by a defendant to the injection of antipsychotic drugs during the course of the criminal proceedings against him, a defendant cannot subsequently claim after the trial that the drugs had been involuntarily injected. In *Riggins* the Court specifically noted that the state became obligated to justify the use of the antipsychotic medication *"[o]nce Riggins moved to terminate administration of [the] antipsychotic medication"* (*Id.* 504 U.S. at ___ [118 L.Ed.2d at 489]; italics added.) Given the language used by the *Riggins* Court, it appears that a defendant must first move to terminate the injection of the antipsychotic drugs before he may complain that they are being *involuntarily* injected. Absent the defendant raising such an objection, the only conclusion that a court is left with is that the drugs were not being involuntarily administered. (Order pages 6:22-7:24).

* * *

In the instant petition, Petitioner has done no more than allege ineffective assistance of counsel; the petition is entirely devoid of any demonstration of prejudice. The petition must therefore be denied as to this claim. As noted above, "A habeas corpus petition must . . . state a "prima facie case" for relief. That is, it must set forth specific facts which, if true, would require issuance of the writ. Any petition that does not meet these standards must be summarily denied . . . ." *People v. Gonzalez* (1990) 51 C3d 1179 (Order pages 10:19-11:4).

Petitioner is incarcerated at California State Prison, California Men's Colony, on a twenty-seven (27) year commitment as the result of a "trial" in which the lawyer he relied upon failed to bring to the court's attention that his client was involuntarily being administered anti-psychotic medication, and thus failed to perform his basic duties necessary for effective assistance of counsel.

There is always the risk of second guessing trial counsel after the event. Nonetheless, the wide latitude and discretion necessarily vested in trial counsel in the area of tactics and strategy must be a reasonable and informed one in the light of the facts and options reasonably apparent to counsel at the time of trial, and founded upon reasonable investigation and preparation. *Strickland v. Washington*, 466 U.S. 668, 684-685, 80 L.Ed.2d 674, 691-692, 104 S.Ct. 2052, 2063 (1984). This Petition shows, and the evidence which would have been presented at a hearing would have established that trial counsel was pitifully inadequate by not bringing to the Court's attention that his client was being involuntarily administered anti-psychotic medication.

The question of an accused being administered anti-psychotic medication during pretrial and trial proceedings has been addressed by this Court on two separate occasions in recent years. See *Washington v. Harper, supra*, 494 U.S. 210 and *Riggins v. Nevada, supra*, 504 U.S. ___, 118 L.Ed.2d 479. This issue is unquestionably one of great national importance and significant to other litigants in that the Superior Court of the State of California failed to follow the mandates of *Washington v. Harper, supra*, 494 U.S. 210 and *Riggins v. Nevada, supra*, 504 U.S. ___, 118 L.Ed.2d 479.

A. Petitioner Was Involuntarily Administered Anti-Psychotic Medication.

In *Washington v. Harper, supra,* 494 U.S. 210 a prison inmate alleged that the State of Washington and various individuals violated his right to due process by giving him Mellaril and other anti-psychotic drugs against his will. The United States Supreme Court found that an inmate had an interest in avoiding involuntary administration of anti-psychotic drugs under the Fourteenth Amendment's Due Process Clause. The court found that forceful injection of medication into a nonconsenting person's body "represents a substantial interference with that person's liberty." *Id.* at 229.

> "The purpose of the drugs is to alter the chemical balance in a patient's brain, leading to changes, intended to be beneficial, in his or her cognitive process. While the therapeutic benefits of anti-psychotic drugs are well documented, it is also true that the drugs can have serious, even fatal, side effects." *Id.* at 229-230.

Taking account of the unique circumstances of penal confinement, however, the Supreme Court determined that due process allows a mentally ill inmate to be treated involuntarily with anti-psychotic drugs where there is a determination that the inmate is dangerous to himself or others and the treatment is in the inmate's medical interest. *Id.* at 227.

Under *Harper,* forcing anti-psychotic drugs on a convicted person is impermissible absent a finding of overriding justification and determination of medical appropriateness. The Fourteenth Amendment affords at

least as much protection to persons the state detains for trial. See *Bell v. Wolfish*, 441 U.S. 520, 545 (1979).

In the subsequent case of *Riggins v. Nevada*, 504 U.S. ___, 118 L.Ed.2d 479 (1992), the United States Supreme Court noted that it had not had occasion to develop substantive standards for judging forced administration of drugs in the trial or pretrial settings, but found that Nevada certainly would have satisfied due process if the prosecution had demonstrated that treatment with anti-psychotic medications was medically appropriate and, considering less intrusive alternatives, essential for the sake of Riggins' own safety or the safety of others. *Id.* at 489. See *Harper, supra* at 225-226, cf. *Addington v. Texas*, 441 U.S. 418 (1979).

In *Riggins*, the Supreme Court observed that the state might have been able to justify medically appropriate involuntary treatment with the drug by establishing that it could not obtain an adjudication of Riggins' guilt or innocence by using less intrusive means. *Id.* at 489-490. See *Illinois v. Allen*, 397 U.S. 337, 347 (1970). The constitutional power to bring an accused to trial is fundamental to a scheme of ordered liberty and a prerequisite to social justice and peace.

It is uncontroverted that Petitioner was administered anti-psychotic medication throughout the proceedings in the Municipal Court and Superior Court. Therefore a writ of habeas corpus should have issued in the Superior Court.

B. Competency of Trial Counsel

The fundamental right of a defendant to constitutionally effective representation of counsel requires that the lawyer diligently and actively participate in the full and effective preparation of this client's case. In the normal exercise of his professional responsibilities in a criminal case, counsel thoroughly familiarizes himself with the accusation, studies the transcript of the testimony taken at the preliminary hearing, researches the law involved, discusses the case with his client and his witnesses, investigates all defenses of law and fact, and considering all of the circumstances of the case, determines his client's best course, bearing in mind a variety of factors such as the credibility of his client's version of what occurred, the availability of witnesses, the nature of the crime, trial strategy, public opinion, the alternatives available – jury trial, court trial, submission of the cause and plea of guilty to a lesser offense – and the chances of acquittal or conviction. *People v. Vest* (1974) 43 CA3d 728; *Strickland v. Washington, supra,* 466 U.S. at pp. 690-691, 80 L.Ed.2d at 695-696, 104 S.Ct. at p. 2066.

The Sixth Amendment and article I § 15 of the California Constitution require counsel's "diligence and active participation in the full and effective preparation of his client's case." *People v. Vest, supra* at 736. "Criminal defense lawyers have a duty to investigate carefully all defenses of fact and of law that may be available to the defendant . . . ." *Strickland v. Washington, supra,* 466 U.S. at pp. 690-691, 80 L.Ed.2d at pp. 690-691, 104 S.Ct. at p. 2066.

In *People v. Pope* (1979) 23 C3d 412, 422, the California Supreme Court discarded the old "farce" or "sham" standard for establishing ineffective assistance of counsel, and held that a conviction may not be upheld if an accused has received representation of a lower quality than that of a reasonably competent attorney acting as a diligent, conscientious advocate. In *People v. Frierson* (1979) 25 C3d 142, the court applied this standard to retained, as well as appointed counsel.

In *People v. Ledesma* (1987) 43 C3d 171, the California Supreme Court reiterated the law applicable to a claim of ineffective assistance of counsel in light of the United States Supreme Court's decision in *Strickland v. Washington, supra*, 466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984). Essentially, establishing inadequacy of counsel has two components.

First, a defendant must show that his counsel's performance was deficient, meaning that said performance " 'fell below an objective standard of reasonableness . . . under prevailing professional norms,' " *Ledesma*, at p. 216, citing *Strickland, supra*, 466 U.S. at pp. 687-688, and *People v. Pope, supra* at 424-425.

Second, it must be established that the defendant was prejudiced by counsel's omission or action.

> 'The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' (*Strickland, supra*, at pp. 693-694 [80 L.Ed.2d at pp. 697-698, 104 S.Ct. at pp. 2067-2068]; see *Fosselman* (1983)

> 33 C3d 572. Specifically, 'When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt.' *Strickland, supra,* at p. 695.

Thus, the burden of proving that his trial counsel was ineffective is on the defendant, who must show that the claimed omissions cannot be explained on the basis of any knowledgeable choice of tactics. (*People v. Jackson* (1980) 28 C3d 264, 289; *People v. O'Connell* (1984) 152 CA 548.) However, merely characterizing the trial counsel's decision or conduct as based on tactics may not "insulate it from constitutional scrutiny, for a defendant can be deprived of effective assistance if the critical tactical decision would not be made by diligent ordinarily prudent lawyers in criminal cases." *People v. Shelley* (1984) 156 CA3d 521, 529; *Strickland v. Washington, supra,* 466 U.S. at pp. 690-691, 80 L.Ed.2d at 695, 104 S.Ct. at p. 2066.

An accused is deprived of the effective assistance of counsel where his lawyer fails to make a timely motion to suppress evidence; almost every trial objection made was improper, incompetent and in the wrong form; he demonstrated poor tactics in the choice of a defense; lacked experience; and no effective motion for new trial was presented. *People v. Whittington* (1977) 74 CA3d 806, 818. The evidence contained in this petition coupled with that which will be presented at the hearing will overwhelmingly establish that Petitioner was denied the effective assistance of counsel.

Petitioner was involuntarily administered antipsychotic drugs throughout the proceedings in the

Municipal Court and all proceedings in the Superior Court including trial and sentencing.

Trial counsel for Petitioner knew that James Guardino was being administered anti-psychotic medication, yet he failed to bring that fact to the attention of the Court at any stage of the proceedings. That failure cannot be dismissed as a tactical decision by the lawyer because to conceal that fact from the court could not be of any benefit to Petitioner.

CONCLUSION

Wherefore, Petitioner James Anthony Guardino respectfully requests that this Court, for the foregoing reason, grant the Petition for Writ of Certiorari

Dated: September 20, 1993

Respectfully submitted,

GUYTON N. JINKERSON
Attorney for Petitioner
James Guardino

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

In re	)	No. 92862
JAMES ANTHONY GUARDINO	)	ORDER
On Habeas Corpus	)	(Filed
	)	Apr. 9, 1993)

JAMES ANTHONY GUARDINO petitions this court for a writ of habeas corpus alleging that his Sixth, Eighth, and Fourteenth Amendment rights were denied during the course of the proceedings in Case No. 92862 from the proceedings in Municipal Court through the proceedings in Superior Court when Petitioner was involuntarily injected with antipsychotic drugs. More specifically, Petitioner alleges that 1) he was denied his constitutional right to a jury trial provided by the above amendments in that Petitioner was involuntarily administered antipsychotic medicine; and, 2) he was deprived of his constitutional right to the effective assistance of counsel when counsel failed to bring to the court's attention the fact that Petitioner was being involuntarily administered antipsychotic drugs. For the reasons hereinafter stated, the Court concludes that Petitioner's claims do not support the relief requested.

a. Petitioner has failed to demonstrate that he ever objected to the trial court that Petitioner was being involuntarily injected with antipsychotic drugs.

Petitioner asserts that he was denied his Sixth, Eighth and Fourteenth Amendment rights when he was "involuntarily" injected with an unnamed antipsychotic drug.

In support of this position, Petitioner cites to two United States Supreme Court cases holding respectively that a pre-trial detainee and a convicted prisoner's due process rights under the Fourteenth Amendment may be violated if the defendant is involuntarily injected with antipsychotic drugs. Petitioner's summary of the holdings in the cases he cites is correct, if incomplete; however, the Court concludes that his application of those holdings to this case is incorrect.

In *Washington v. Harper* (1990) 494 U.S. 210 [108 L.Ed.2d 178], the United States Supreme Court addressed the issue of whether or not the Fourteenth Amendment and due process require that a judicial hearing be held before a state may treat a mentally ill prisoner with antipsychotic drugs against his will. In *Harper*, the defendant, who had been sentenced to prison after being convicted of robbery, was housed in the mental health unit of the prison. While in that unit, the defendant consented to the use of antipsychotic drugs. The defendant was released on parole, and after be subsequently assaulted two nurses, he was sent back to prison and was again administered antipsychotic drugs. At first the defendant again consented to the drugs, but he eventually objected to the medication, at which point he was medicated over his objections. Under the Washington D.O.C. policies in effect where the defendant was incarcerated, a defendant objecting to the administration of such treatment could only be forced to undergo the treatment after certain requirements were met. These requirements included, in part, a finding by a psychiatrist that the defendant suffered from a mental disorder which either gravely disabled him or caused the defendant the likelihood of

serious harm; after this determination was made, the defendant was entitled to a hearing before a special committee consisting of various doctors. If the majority of the panel determined that the defendant was suffering from a mental disorder and was either gravely disabled or dangerous, the drugs could be administered over the defendant's objections. The defendant was also guaranteed certain procedural rights before, during and after the hearing.

The defendant in *Harper* was medicated, for an almost continuous period of over two years, at the end of which he filed a suit to stop the involuntary medication.

The *Harper* Court held that the Washington scheme afforded a defendant sufficient protection of his liberty interest under the Due Process Clause such that the Fourteenth Amendment was not violated, "[t]hese standards, which recognize both the prisoner's medical interests and the State's interests, meet the demands of the Due Process Clause." (*Id.* 494 U.S. at 221-223 [108 L.Ed.2d at 198-199].) Thus, the Court concluded, "We hold that, given the requirements of the prison environment, the Due Process Clause permits the State to treat a prison inmate who has a serious mental illness with antipsychotic drugs against his will, if the inmate is dangerous to himself or others and the treatment is in the inmate's medical interest." (*Id.* 494 U.S. at 227 [108 L.Ed.2d 201-202].) Finally, the Court concluded that while a defendant is entitled to a hearing, he is not entitled to a hearing conducted by a judicial officer; rather, medical personnel may hold the hearing. (*Id.* 494 U.S. at 231 [108 L.Ed.2d at 204].)

After the decision in *Harper,* in *Riggins v. Nevada* (1992) 504 U.S. ___ [118 L.Ed.2d 479]), the Supreme Court addressed whether or not pretrial detainees were also entitled to a hearing prior to being involuntarily injected with antipsychotic drugs. In *Riggins* the defendant was injected with antipsychotic drugs over his objection when the District Court denied the defendant's request to suspend the involuntary medication of the defendant. The defendant had objected to medication on the grounds that the continued administration of the drugs affected his demeanor and mental state during the course of the trial. After the denial of his motion, the defendant was subsequently convicted of murder and sentenced to death. The defendant appealed to the Nevada Supreme Court, raising, among other issues, the issue regarding involuntary medication during the course of the trial. The Nevada court affirmed the defendant's conviction.

The United States Supreme Court reversed the state court. In reversing the Nevada court, the Supreme Court first reviewed the holding in *Harper, supra,* and pointed out that "The Fourteenth Amendment affords at least as much protection to persons the State detains for trial [citation]." (*Riggins,* at 504 U.S. at ___ [118 L.Ed.2d at 489].) With this in mind, the Court then held that "*[o]nce Riggins moved to terminate administration of antipsychotic medication,* the State became obligated to establish the need for Mellaril and the appropriateness of the drug." (*Id.* 504 U.S. at ___ [118 L.Ed.2d at 489]; italics added.) Having concluded that once the defendant objected to the drugs, the State had the burden of justifying the use of the drugs, the Court held that

> Nevada certainly would have satisfied due process if the prosecution had demonstrated and the District Court had found that treatment with antipsychotic medication was medically appropriate and, considering less intrusive alternatives, essential for the sake of Riggins' own safety or the safety of others. [citations] Similarly, the State might have been able to justify medically appropriate, involuntary treatment with the drug by establishing that it could not obtain an adjudication of Riggins' guilt or innocence by using less intrusive means. [citation]. (*Id.* 504 U.S. at ___ [118 L.Ed.2d at 489-490].)

The *Riggins* Court concluded that no such determination had been made by the district court which originally heard the defendant's motion to discontinue the medication. The Court then found that Riggins did not need to establish prejudice because to require that would require Riggins to show how the trial would have proceeded differently had he not been compelled to be medicated and the Court did not believe the answer to that question could be determined based on the record before it. When this was considered in light of expert testimony indicating that the defendant's defense had been impaired through the administration of the medication, the Court was willing to forego proof of prejudice. Though it should be noted that the Court did point out that in some cases, trial prejudice could be justified by an essential state interest. (*Id.* 504 U.S. at ___ [118 L.Ed.2d at 490-491].)

After the Court decided that the defendant did not have to show prejudice, the Court reversed the defendant's conviction and remanded the case for further proceedings not inconsistent with the Court's opinion.

Under the decisions in *Riggins* and *Harper*, it is clear that a pretrial detainee's due process rights are violated where he is *involuntarily* injected with antipsychotic medicine in order to control the defendant during the course of the criminal proceedings against him unless the defendant is first accorded a hearing in which it is determined that 1) the medication was medically appropriate, taking into consideration less intrusive, alternative means, and necessary to ensure the safety of the defendant or others; or 2) the medication is necessary to ensure the adjudication of the defendant and there are no less intrusive means of carrying this goal out.

Notwithstanding the above, it appears that in the absence of a timely objection by a defendant to the injection of antipsychotic drugs during the course of the criminal proceedings against him, a defendant cannot subsequently claim after the trial that the drugs had been involuntarily injected. In *Riggins* the Court specifically noted that the state became obligated to justify the use of the antipsychotic medication *"[o]nce Riggins moved to terminate administration of [the] antipsychotic medication"* (*Id.* 504 U.S. at ___ [118 L.Ed.2d at 489]; italics added.) Given the language used by the *Riggins* Court, it appears that a defendant must first move to terminate the injection of the antipsychotic drugs before he may complain that they are being *involuntarily* injected. Absent the defendant raising such an objection, the only conclusion that a court is left with is that the drugs were not being involuntarily administered.

Turning to the instant case, the petition fails to state anywhere that at the time Petitioner was injected with the antipsychotic drugs, that the Petitioner objected to them;

additionally, the Petitioner states that his trial counsel never raised the issue with the trial court. Thus, the only conclusion the petition presents is that despite the fact that Petitioner now claims the antipsychotic drugs were involuntarily administered, there was no indication during the relevant time period that the drugs were in fact being involuntarily administered.

Because the petition fails to set forth and establish that Petitioner ever objected to the injection of the antipsychotic drugs at the time of the criminal proceedings at issue here and that the drugs were thus administered involuntarily, Petitioner has failed to demonstrate sufficient facts requiring any further action by this court. "A habeas corpus petition must . . . state a "prima facie case" for relief. That is, it must set forth specific facts which, if true, would require issuance of the writ. Any petition that does not meet these standards must be summarily denied. . . . ' (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1258.) "An appellate court is entitled to and does 'require of a convicted defendant that he allege with particularity the facts upon which he would have a final judgment overturned.' [citation] The petition for the writ must show facts entitling the petition to be discharged. [citation]" (*Lincoln v. Fox* (1959) 168 Cal.App.2d 31, 33.) Furthermore, even where transcripts or exhibits are included with a petition, the "court is not required to ferret out necessary elements of a cause of action . . . by referring to exhibits attached to a pleading." (*Lincoln v. Fox, supra,* at 33.)

b. Petitioner has failed to demonstrate grounds for relief as to his ineffective assistance of counsel claim.

A defendant has a Sixth Amendment right to effective assistance of counsel in a criminal trial. (*People v. Ledesma* (1987) 43 Cal. 3d 171, 215 (under both the United States and California constitutions); *Holloway v. Arkansas* (1978) 435 U.S. 475, 481 [55 L.Ed.2d 426, 432-33] (under the United States Constitution).) A defendant "can reasonably expect that in the course of representation his counsel will undertake only those actions that a reasonably competent attorney would undertake." (*Ledesma, supra,* 43 Cal.3d at 215.)

A defendant must make a showing, first, that the errors committed by his attorney "fell below an objective standard of reasonableness . . . under prevailing professional norms." (*Strickland v. Washington* (1984) 466 U.S. 668, 688 [80 L.Ed.2d 674, 693-94].) Second, a defendant must show a "reasonable possibility that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." (*Id.* at 693-94 [80 L.Ed.2d at 697-98].); *See Also Ledesma, supra,* 43 Cal.3d at 215-218.)

"[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as result of the alleged deficiencies. The object of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that

course should be followed. Courts should strive to ensure that ineffectiveness claims not become so burdensome to defense counsel that the entire criminal justice system suffers as a result." (*Strickland v. Washington, supra,* 466 U.S. at 697 [80 L.Ed.2d at 699-700].)

"Finally, the burden of proof that the defendant must meet in order to establish his entitlement to relief on an ineffective-assistance claim is preponderance of the evidence. [citation]" (*Ledesma, supra,* 43 Cal.3d at 218.)

In the instant petition, Petitioner has done no more than allege ineffective assistance of counsel; the petition is entirely devoid of any demonstration of prejudice. The petition must therefore be denied as to this claim. As noted above, "A habeas corpus petition must . . . state a "prima facie case" for relief. That is, it must set forth specific facts which, if true, would require issuance of the writ. Any petition that does not meet these standards must be summarily denied. . . . " (*People v. Gonzalez, supra,* 51 Cal.3d at 1258.)

The Petition is DENIED.

DATED: April 9, 1993 /s/ Thomas C. Hastings
THOMAS C. HASTINGS
JUDGE OF THE
SUPERIOR COURT

cc: Petitioner
District Attorney
Research
File

COURT OF APPEAL OF THE STATE OF CALIFORNIA
in and for the
SIXTH APPELLATE DISTRICT

IN RE JAMES ANTHONY GUARDINO, On Habeas Corpus.	)	No. H011124 Superior Court No. 92862 (Filed Apr. 28, 1993)

BY THE COURT

The petition for writ of habeas corpus is denied.

(Premo, Acting P.J., Elia, J. and Mihara, J. participated in this decision.)

Dated APR 28 1993

ELIA, J ACTING P.J.

Sixth Appellate District No. H011124
S032719

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA
IN BANK

In Re JAMES ANTHONY GUARDINO On Habeas Corpus

(Filed Jun. 23, 1993)

Petition for review DENIED.

LUCAS
Chief Justice